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HOUSE BILL 221

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO LAW ENFORCEMENT; ENACTING THE RESERVE OFFICER ACT;
PROVIDING FOR CERTIFICATION OF RESERVE OFFICERS TO ASSIST LAW
ENFORCEMENT AGENCIES ON A TEMPORARY, PART-TIME OR VOLUNTEER
BASIS; DEFINING POWERS AND DUTIES; REQUIRING TRAINING AND OTHER
QUALIFICATIONS; AMENDING SECTIONS OF THE CRIMINAL PROCEDURE
ACT, THE TORT CLAIMS ACT AND THE MOTOR VEHICLE CODE AND SECTION
35-6-3 NMSA 1978 (BEING LAWS 1968, CHAPTER 62, SECTION 94, AS
AMENDED) TO INCLUDE CERTIFIED RESERVE OFFICERS; RECONCILING
MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2009.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 10 of this act may be cited as the "Reserve Officer
Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
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1 Reserve Officer Act:

2 A. "board" means the New Mexico law enforcement
3 academy board;

4 B. "certified" means meeting all the qualifications
5 for certification established by statute and rule as determined
6 by the board;

7 C. "director" means the director of the New Mexico
8 law enforcement academy; and

9 D. "reserve officer" means a volunteer or a
10 temporary or part-time employee of a state or local law
11 enforcement agency who is certified and performs law
12 enforcement duties pursuant to the Reserve Officer Act.

13 SECTION 3. [NEW MATERIAL] QUALIFICATIONS FOR
14 CERTIFICATION.--

15 A. The board shall promulgate rules for the
16 certification of reserve officers.

17 B. A candidate for certification as a reserve
18 officer shall provide evidence satisfactory to the board that
19 the applicant:

20 (1) is a citizen of the United States and has
21 reached the age of majority;

22 (2) holds a high school diploma or the
23 equivalent;

24 (3) holds a valid driver's license;

25 (4) is not a member of the New Mexico mounted

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1 patrol;

2 (5) has not been convicted of or pled guilty
3 to or entered a plea of nolo contendere to:

4 (a) a felony charge; or

5 (b) a violation of a federal or state
6 law or local ordinance relating to aggravated assault, theft,
7 driving while under the influence of intoxicating liquor or
8 drugs or controlled substances or any other crime involving
9 moral turpitude within the three-year period immediately
10 preceding the application;

11 (6) has not been released or discharged under
12 dishonorable conditions from any of the armed forces of the
13 United States;

14 (7) after examination by a physician and a
15 psychologist, is free from any physical, emotional or mental
16 condition that might adversely affect performance as a reserve
17 officer;

18 (8) is of good moral character;

19 (9) has been awarded a certificate of
20 completion attesting to the candidate's completion of an
21 approved reserve officer law enforcement training program; and

22 (10) has met any other requirements for
23 certification prescribed by the board.

24 SECTION 4. [NEW MATERIAL] RESERVE OFFICER--SCOPE OF
25 AUTHORITY.--

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1 A. A reserve officer commissioned by a state or
2 local law enforcement agency and assigned to the prevention and
3 detection of crime and the general enforcement of the laws of
4 this state shall have the powers of a certified law enforcement
5 officer when working with supervision from a full-time salaried
6 on-duty certified law enforcement officer.

7 B. The powers and authority of a reserve officer
8 extend only to the scope and for the duration of the reserve
9 officer's specific assignment.

10 SECTION 5. [NEW MATERIAL] RESERVE OFFICER LAW ENFORCEMENT
11 TRAINING.--

12 A. The board shall develop and adopt a reserve
13 officer law enforcement training program. The reserve officer
14 law enforcement training program shall consist of not less than
15 four hundred hours of instruction and not more than the number
16 of hours required for certification as a law enforcement
17 officer.

18 B. Reserve officer law enforcement training shall
19 be conducted by board-qualified instructors and may be taught
20 at a location designated by the head of a local law enforcement
21 agency.

22 C. A reserve officer applicant shall not be
23 required to meet all of the physical fitness and agility
24 requirements required for certification as a law enforcement
25 officer; provided, however, that a reserve officer applicant

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1 shall complete fitness tests at or above fifty percent of the
2 requirements for certification as a law enforcement officer.

3 D. Domestic abuse incident training and training
4 for ensuring child safety upon the arrest of a parent or
5 guardian shall be included in the curriculum of the reserve
6 officer law enforcement training program.

7 SECTION 6. [NEW MATERIAL] WAIVER OF RESERVE OFFICER LAW
8 ENFORCEMENT TRAINING.--

9 A. The director shall waive the reserve officer law
10 enforcement training program for reserve officer applicants who
11 furnish evidence of satisfactory completion of a basic law
12 enforcement training program that, in the director's opinion,
13 is substantially equivalent to the board-approved reserve
14 officer law enforcement training program.

15 B. The director shall review all law enforcement
16 training received during a reserve officer applicant's career.
17 The director shall accept a reserve officer applicant's
18 previous law enforcement training if it met the standards of
19 the board at the time of the training. If a reserve officer
20 applicant's training is sufficient in some areas but not in
21 others, the director shall waive training in areas in which the
22 reserve officer applicant has received sufficient training and
23 shall only require the reserve officer applicant to complete
24 training in the areas where the reserve officer applicant has
25 not received sufficient training.

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1 C. A person who began service as a reserve officer
2 prior to July 1, 2013 may be exempted from the reserve officer
3 law enforcement training program at the director's discretion.

4 D. A person granted a waiver pursuant to this
5 section shall meet all other requirements for certification set
6 forth in the Reserve Officer Act.

7 SECTION 7. [NEW MATERIAL] IN-SERVICE LAW ENFORCEMENT
8 TRAINING.--

9 A. The board shall develop in-service law
10 enforcement training courses for reserve officers, and these
11 training courses shall be required for reserve officers every
12 two years. The first in-service training course shall commence
13 no later than twelve months after graduation from a board-
14 approved reserve officer law enforcement training program.

15 B. A reserve officer shall provide proof of
16 completion of in-service training requirements to the director
17 no later than March 1 of the year subsequent to the year in
18 which the requirements must be met. Failure to complete
19 in-service training requirements may be grounds for suspension
20 of a reserve officer's certification. A reserve officer's
21 certification may be reinstated by the board when the reserve
22 officer presents the board with evidence of satisfaction of
23 in-service training requirements.

24 C. The director shall provide annual notice to all
25 reserve officers regarding in-service training requirements.

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1 SECTION 8. [NEW MATERIAL] REPORTS--ROSTER.--

2 A. Every law enforcement agency within the state
3 shall submit quarterly reports to the director on the status of
4 each reserve officer who was commissioned by the law
5 enforcement agency. The reporting forms and submittal dates
6 shall be prescribed by the director.

7 B. The director shall maintain a roster of all
8 certified reserve officers.

9 SECTION 9. [NEW MATERIAL] REFUSAL, SUSPENSION OR
10 REVOCATION OF CERTIFICATION.--

11 A. After consultation with the commissioning law
12 enforcement agency or agencies, the board may refuse to issue
13 certification to an applicant or may suspend or revoke a
14 reserve officer's certification when the board determines that
15 the applicant or the reserve officer has:

16 (1) failed to satisfy the qualifications for
17 reserve officer certification set forth in the Reserve Officer
18 Act;

19 (2) committed acts that constitute dishonesty
20 or fraud;

21 (3) been convicted of, pled guilty to or
22 entered a plea of no contest to:

23 (a) any felony charge; or

24 (b) any violation of federal or state
25 law or a local ordinance relating to aggravated assault, theft,

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1 driving while under the influence of intoxicating liquor or
2 drugs or controlled substances or any law or ordinance
3 involving moral turpitude; or

4 (4) knowingly made any false statement in the
5 application for certification as a reserve officer.

6 B. The board shall promulgate rules and
7 administrative procedures for the suspension or revocation of a
8 reserve officer's certification that include:

9 (1) notice and an opportunity for the affected
10 reserve officer to be heard; and

11 (2) procedures for review of the board's
12 decision.

13 SECTION 10. [NEW MATERIAL] SPECIAL DEPUTY COMMISSIONS.--
14 Nothing in the Reserve Officer Act shall restrict a sheriff's
15 power to issue special deputy commissions or to have
16 uncertified volunteer staff members.

17 SECTION 11. Section 31-1-2 NMSA 1978 (being Laws 1972,
18 Chapter 71, Section 5, as amended) is amended to read:

19 "31-1-2. DEFINITIONS.--Unless a specific meaning is
20 given, as used in the Criminal Procedure Act:

21 A. "accused" means any person charged with the
22 violation of any law of this state imposing a criminal penalty;

23 B. "bail bond" is a contract between surety and the
24 state to the effect that the accused and the surety will appear
25 in court when required and will comply with all conditions of

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1 the bond;

2 C. "defendant" means any person accused of a
3 violation of any law of this state imposing a criminal penalty;

4 D. "felony" means any crime so designated by law or
5 if upon conviction thereof a sentence of death or of
6 imprisonment for a term of one year or more is authorized;

7 E. "person", unless a contrary intention appears,
8 means any individual, estate, trust, receiver, cooperative
9 association, club, corporation, company, firm, partnership,
10 joint venture, syndicate or other entity;

11 F. "police officer", "law enforcement officer",
12 "peace officer" or "officer" means any full-time salaried ~~[or]~~
13 officer, certified part-time salaried officer or commissioned
14 certified reserve officer who by virtue of office or public
15 employment is vested by law with the duty to maintain the
16 public peace;

17 G. "recognizance" means any obligation of record
18 entered into before a court requiring the accused to appear at
19 all appropriate times or forfeit any bail and be subject to
20 criminal penalty for failure to appear;

21 H. "release on personal recognizance" or "release
22 on own recognizance" means the release of a defendant without
23 bail, bail bond or sureties upon the defendant's promise to
24 appear at all appropriate times;

25 I. "rules of civil procedure" means rules of civil

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1 procedure for the district courts of the state of New Mexico,
2 as may be amended from time to time;

3 J. "rules of criminal procedure" means rules of
4 criminal procedure for the district courts, magistrate courts
5 and municipal courts adopted by the New Mexico supreme court,
6 as may be amended from time to time;

7 K. "misdemeanor" means any offense for which the
8 authorized penalty upon conviction is imprisonment in excess of
9 six months but less than one year; and

10 L. "petty misdemeanor" means any offense so
11 designated by law or if upon conviction a sentence of
12 imprisonment for six months or less is authorized."

13 SECTION 12. Section 35-6-3 NMSA 1978 (being Laws 1968,
14 Chapter 62, Section 94, as amended) is amended to read:

15 "35-6-3. MAGISTRATE COSTS--ADVANCE PAYMENT.--

16 A. Except for parties granted free process because
17 of indigency, any party filing any civil action or requesting
18 services from the magistrate court shall pay in advance the
19 costs required by law to be collected by magistrates.

20 B. Any person filing a complaint in a criminal
21 action in the magistrate court shall pay in advance the costs
22 required by law to be collected by magistrates, except that no
23 costs shall be collected from a person filing a complaint in a
24 criminal action alleging domestic violence or from a campus
25 security officer, a municipal police officer, an Indian tribal

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1 or pueblo law enforcement officer, a commissioned certified
2 reserve officer or [~~from~~] a full-time, salaried county or state
3 law enforcement officer filing the complaint."

4 SECTION 13. Section 41-4-1 NMSA 1978 (being Laws 1976,
5 Chapter 58, Section 1, as amended) is amended to read:

6 "41-4-1. SHORT TITLE.--~~[Sections 41-4-1 through 41-4-27]~~
7 Chapter 41, Article 4 NMSA 1978 may be cited as the "Tort
8 Claims Act"."

9 SECTION 14. Section 41-4-3 NMSA 1978 (being Laws 1976,
10 Chapter 58, Section 3, as amended by Laws 2009, Chapter 8,
11 Section 2 and by Laws 2009, Chapter 129, Section 2 and also by
12 Laws 2009, Chapter 249, Section 2) is amended to read:

13 "41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

14 A. "board" means the risk management advisory
15 board;

16 B. "governmental entity" means the state or any
17 local public body as defined in Subsections C and H of this
18 section;

19 C. "local public body" means all political
20 subdivisions of the state and their agencies, instrumentalities
21 and institutions and all water and natural gas associations
22 organized pursuant to Chapter 3, Article 28 NMSA 1978;

23 D. "law enforcement officer" means a full-time
24 salaried public employee of a governmental entity, [~~or~~] a
25 certified part-time salaried police officer employed by a

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1 governmental entity or a certified reserve officer commissioned
2 by a governmental entity whose principal duties under law are
3 to hold in custody any person accused of a criminal offense, to
4 maintain public order or to make arrests for crimes, or members
5 of the national guard when called to active duty by the
6 governor;

7 E. "maintenance" does not include:

8 (1) conduct involved in the issuance of a
9 permit, driver's license or other official authorization to use
10 the roads or highways of the state in a particular manner; or

11 (2) an activity or event relating to a public
12 building or public housing project that was not foreseeable;

13 F. "public employee" means an officer, employee or
14 servant of a governmental entity, excluding independent
15 contractors except for individuals defined in Paragraphs (7),
16 (8), (10), (14) and (17) of this subsection, or of a
17 corporation organized pursuant to the Educational Assistance
18 Act, the Small Business Investment Act or the Mortgage Finance
19 Authority Act or a licensed health care provider, who has no
20 medical liability insurance, providing voluntary services as
21 defined in Paragraph (16) of this subsection and including:

22 (1) elected or appointed officials;

23 (2) law enforcement officers;

24 (3) persons acting on behalf or in service of
25 a governmental entity in any official capacity, whether with or

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1 without compensation;

2 (4) licensed foster parents providing care for
3 children in the custody of the human services department,
4 corrections department or department of health, but not
5 including foster parents certified by a licensed child
6 placement agency;

7 (5) members of state or local selection panels
8 established pursuant to the Adult Community Corrections Act;

9 (6) members of state or local selection panels
10 established pursuant to the Juvenile Community Corrections Act;

11 (7) licensed medical, psychological or dental
12 arts practitioners providing services to the corrections
13 department pursuant to contract;

14 (8) members of the board of directors of the
15 New Mexico medical insurance pool;

16 (9) individuals who are members of medical
17 review boards, committees or panels established by the
18 educational retirement board or the retirement board of the
19 public employees retirement association;

20 (10) licensed medical, psychological or dental
21 arts practitioners providing services to the children, youth
22 and families department pursuant to contract;

23 (11) members of the board of directors of the
24 New Mexico educational assistance foundation;

25 (12) members of the board of directors of the

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1 New Mexico student loan guarantee corporation;

2 (13) members of the New Mexico mortgage
3 finance authority;

4 (14) volunteers, employees and board members
5 of court-appointed special advocate programs;

6 (15) members of the board of directors of the
7 small business investment corporation;

8 (16) health care providers licensed in New
9 Mexico who render voluntary health care services without
10 compensation in accordance with rules promulgated by the
11 secretary of health. The rules shall include requirements for
12 the types of locations at which the services are rendered, the
13 allowed scope of practice and measures to ensure quality of
14 care; and

15 (17) an individual while participating in the
16 state's adaptive driving program and only while using a
17 special-use state vehicle for evaluation and training purposes
18 in that program;

19 G. "scope of duty" means performing any duties that
20 a public employee is requested, required or authorized to
21 perform by the governmental entity, regardless of the time and
22 place of performance; and

23 H. "state" or "state agency" means the state of New
24 Mexico or any of its branches, agencies, departments, boards,
25 instrumentalities or institutions."

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1 SECTION 15. Section 66-8-124 NMSA 1978 (being Laws 1961,
2 Chapter 213, Section 3, as amended) is amended to read:

3 "66-8-124. ARRESTING OFFICER TO BE IN UNIFORM.--

4 A. No person shall be arrested for violating the
5 Motor Vehicle Code or other law relating to motor vehicles
6 punishable as a misdemeanor except by a commissioned salaried
7 peace officer or a commissioned certified reserve officer who,
8 at the time of arrest, is wearing a uniform clearly indicating
9 the ~~[peace]~~ officer's official status.

10 B. Notwithstanding the provisions of Subsection A
11 of this section, a municipality may provide by ordinance that
12 uniformed private security guards may be commissioned by the
13 local police agency to issue parking citations for violations
14 of clearly and properly marked fire zones and access zones for
15 persons with significant mobility limitation. Prior to the
16 commissioning of any security guard, the employer of the
17 security guard shall agree in writing with the local police
18 agency to the commissioning of the employer's security guard.
19 The employer of any security guard commissioned under the
20 provisions of this section shall be liable for the actions of
21 that security guard in carrying out the security guard's duties
22 pursuant to that commission. Notwithstanding the provisions of
23 the Tort Claims Act, private security guards commissioned under
24 this section shall not be deemed public employees under that
25 act."

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1 SECTION 16. Section 66-8-125 NMSA 1978 (being Laws 1978,
2 Chapter 35, Section 533) is amended to read:

3 "66-8-125. ARREST WITHOUT WARRANT.--

4 A. Members of the New Mexico state police, sheriffs
5 and their salaried deputies, [~~and~~] members of any municipal
6 police force and commissioned certified reserve officers may
7 arrest without warrant any person:

8 (1) present at the scene of a motor vehicle
9 accident;

10 (2) on a highway when charged with theft of a
11 motor vehicle; or

12 (3) charged with crime in another
13 jurisdiction, upon receipt of a message giving the name or a
14 reasonably accurate description of the person wanted, the crime
15 alleged and a statement [~~he~~] that the person is likely to flee
16 the jurisdiction of [~~the~~] this state.

17 B. To arrest without warrant, the arresting officer
18 must have reasonable grounds, based on personal investigation,
19 which may include information from eyewitnesses, to believe the
20 person arrested has committed a crime.

21 C. Members of the New Mexico state police, sheriffs
22 and their salaried deputies, [~~and~~] members of any municipal
23 police force and commissioned certified reserve officers may
24 not make [~~arrest~~] arrests for traffic violations if not in
25 uniform; however, nothing in this section shall be construed to

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1 prohibit the arrest, without warrant, by a peace officer of any
2 person when probable cause exists to believe that a felony
3 crime has been committed or in non-traffic cases."

4 SECTION 17. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2013.

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